BHSF 6.9.1.2

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10/12/2001 10:38 AM

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cc:

Subject: TMDL Response to Comments - Economic Analysis

M and P --

See attached for comment/response from TMDL RtoC regarding 1997 economic analysis.

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EPA/DEQ fail to address technological feasibility and economics in the TMDL. "[T]he TMDL presumes that under the CWA Sec. 303(d) economics may be ignored. [Section] 303(d) does not negate CWA sections that specifically address effluent limitations. This would not be "consistent with the provisions of this Act" as mandated by Congress. Therefore, it is curious that EPA would conduct an economic analysis (albeit an insufficient economic analysis) on its water quality standards rulemaking for Idaho (in 1997) and yet ignore economics under a 303(d) TMDL. The EPA's 1997 economic analysis & accompanying technical support document (*Economic Analysis for the Final Water Quality Standards for Idaho* -July 21, 1997) at least provided some form of cost effectiveness guidelines for a given technology, even though reality appeared to play a minor role in this exercise. For example, the economic analysis only included one Lucky Friday pond under an incorrect assumption that another pond already was permitted under the national toxic rule (NTR) requirements. The Lucky Friday permit already is water quality-based, but not under the NTR. Further, in the *Economic Analysis*, individual pollutants are given specific factors based upon obscure "toxic weights." The effect of this mathematical manipulation is a distortion of the true "cost-effectiveness" of a given treatment technology. This occurs because the "toxic weights" result in a much larger denominator of the formula (treatment cost - pounds of metal removed), with the actual estimated annualized treatment costs (annual O & M + annualized capital) as the numerator.

To further the Lucky Friday example, the *Economic Analysis* used permit limits rather than actual discharge levels of metals, resulting in a distorted overestimate of "toxic weights," thus a lower "cost effectiveness." Using procedures from the ANALYSIS, the "cost effectiveness" was estimated as $64 for Lucky Friday. Using actual discharge levels of metals and the same procedure from the ECONOMIC ANALYSIS, actual "cost effectiveness" is $939. Using real numbers is important because EPA used a "$200 per toxic pounds-equivalent trigger" above which a facility "qualified" for "alternative regulatory approaches." These "alternative regulatory approaches" include procedures "such as phased total maximum daily loads (TMDLs), site-specific criteria, and water quality variances." As detailed in comments above, the proposed TMDL is not appropriate. Further, it is not necessary to request a "water quality variance" for a use/criteria not applicable to the receiving water (also as detailed in comments above). Therefore, it appears that the site-specific criteria currently is the best known approach available; this is the approach being taken under the 1993 agreement between EPA, DEQ and Hecla."

Response: In the Clean Water Act and implementing regulations, there is no requirement to conduct an economic analysis of wasteload allocations derived in a TMDL. Nevertheless, EPA and DEQ discussed the feasibility of meeting NPDES effluent limits based on the TMDL in the TMDL TSD, and the agencies solicited comment from the public on this topic to assist in developing implementation strategies.

The economic analysis referenced by the commenter was performed for EPA's 1997 rulemaking for water quality standards (including cold water biota use designations) in the South Fork Coeur d'Alene River and tributaries. This analysis is not relevant or applicable to this TMDL. EPA's 1997 rulemaking was challenged in Idaho District Court. See Idaho Mining Assoc. vs. Browner (D.Id., CV-98-0390-S-MHW). The court upheld EPA's rulemaking. Since the TMDL is based on applicable water quality standards for Idaho, the effect of the court's ruling is that the applicable standards have not changed at the target sites in the TMDL.